



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 20, 2004

Ms. April M Virnig  
Taylor, Olson, Adkins, Sralla & Ellam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2004-3206

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 199712.

The City of Runaway Bay (the "city"), which you represent, received a request for information relating to the arrest of a named individual on January 1, 2002. You claim that some of the requested information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a completed report that is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>You indicate that the city has already released basic front page offense and arrest information. See Gov't Code § 552.108(c); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

We have marked the completed report which is expressly public under section 552.022(a)(1) and therefore must be released unless it is excepted from disclosure under section 552.108 or is confidential under other law. You do not claim that the completed report is excepted from disclosure under section 552.108. Therefore, the city may withhold the report only if it is confidential under other law. Although you argue that the report is excepted under section 552.103, section 552.103 is a discretionary exception and, therefore, is not "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the completed report under section 552.103.

The completed report does contain information that is confidential under other law. Section 552.130, which excepts from disclosure certain motor vehicle information, deems the Texas driver's license, license plate, and vehicle identification numbers in the report confidential. Additionally, section 552.101, which excepts from disclosure information deemed confidential by statute, may except the social security number in the report from disclosure based on a confidentiality provision within the federal Social Security Act. However, both section 552.130 and the confidentiality provision within the federal Social Security Act are designed to protect the privacy rights of individuals. Therefore, in this case, the requestor, who is the authorized representative of the individual whose motor vehicle information and social security number appear in the completed report, has a special right of access to this information. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access, beyond right of general public, to information that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests). Thus, the completed report must be released to the requestor in its entirety.<sup>2</sup>

We will address your section 552.103 claim for the remaining information at issue. Section 552.103 provides as follows:

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<sup>2</sup>Because some of the information in the completed report is confidential with respect to the general public, if the city receives a future request for this information from an individual who is not the subject of the information or is not that individual's authorized representative, the city should again seek our decision regarding release of this information.

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that civil litigation relating to the arrest of the named individual was pending on the date that the city received the request for information. You have provided a copy of pleadings from the pending litigation. Having considered your arguments and the submitted pleadings and information, we agree that the information at issue relates to the pending litigation.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. One of the submitted documents, which we have marked, was obtained from the opposing party in the litigation. This document is not excepted from disclosure under section 552.103(a) and must be released. The city may withhold the remaining information at issue from disclosure under section 552.103(a). We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the completed report to the requestor. The city must also release the document that was obtained from the opposing party in the pending litigation. The city may withhold the remaining information from disclosure under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen Hattaway  
Assistant Attorney General  
Open Records Division

KEH/sdk

Ref: ID# 199712

Enc. Submitted documents

c: J.J. Knauff  
Miller & McCarthy, P.C.  
3811 Turtle Creek Boulevard, Suite 1950  
Dallas, Texas 75219  
(w/o enclosures)